IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

CRP.No. 1038 of 2005()

AGAINST THE ORDER DATED 01/07/2005 IN EA.102/05 IN EP.34/04 IN OS.5/2001 of SUB COURT,NEYYATTINKARA

.....

REVN. PETITIONER: PETITIONER/JUDGMENT DEBTOR

UDAYAKUMAR, S/O.SUNDARA PANICKER,
RESMI NIVAS, ANAYARA, KADAKOMPALLI VILLAGE.

BY ADV. SRI.A.AHZAR

RESPONDENTS: COUNTER PETITIONER/DECREE HOLDER

BHASKARAN NAIR, S/O.KRISSHNA PILLAI,
B.R.COTTAGE, NEDIYAMCODU,
PARASUVAICKAL VILLAGE, PARASUVAICKAL DESOM.

BY ADV. SRI.R.S.KALKURA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP NO. 1038 OF 2005

ORDER ON CMP NO.2459 OF 2005 IN CRP NO.1038 OF 2005

DISMISSED

20.07.2007 SD/- PIUS C. KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE, J.

C.R.P. No. 1038 OF 2005

Dated this the 20th day of July, 2007

O R D E R

The grievance of the petitioner who is the judgment debtor in a money decree obtained by the respondent is that the learned Subordinate judge has dismissed an application filed by him for cancelling the warrant on the ground that he is seriously ill, i.e., serious cardiac problems. I notice that under the impugned order the learned Subordinate Judge refused to place reliance on the medical certificate produced by the petitioner on the reason that the Doctor who issued the medical certificate has not been examined and also on the reason that the medical certificate does not give the details necessary for identifying the patient. Those reasons cannot be said to be wrong. At the same time the learned counsel for the petitioner submits that if opportunity is given to the petitioner who is even now a a heart patient he will be able to substantiate that on account of his serious illness he is unable to undergo imprisonment in civil prison.

I am inclined to grant an opportunity to the petitioner, but only on condition that he pays at the rate of Rs.10,000/- commencing from 15th August 2007 till such time as the entire debt is wiped off. Accordingly I set aside the impugned order directing the court below to permit the

petitioner to adduce further evidence in the matter by examining the Doctor concerned and pass fresh orders on the basis of the evidence so adduced but only on condition that the petitioner pays every month at the rate of Rs.10,000/- commencing from 15th August 2007. It is however made clear that if the petitioner defaults payment of any instalment, he will forfeit the benefit of this judgment under which event the impugned order will revive. The enquiry shall be completed and fresh orders shall be passed by the learned Subordinate Judge at the earliest and at any rate within six months of receiving coy of this judgment. The stay currently in force is made absolute till such time as fresh decision as directed above is taken by the learned Munsiff.

PIUS C. KURIAKOSE, JUDGE

btt